

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellant(s): Singh, B., et al.
Appl. No.: 09/881,935
Conf. No.: 8096
Filed: June 15, 2001
Title: METHOD AND APPARATUS FOR CUSTOMIZING A MULTIPLE
COMPONENT PET FOOD
Art Unit: 1764
Examiner: Bhat, Nina Nmn
Docket No.: 115808-459

Commissioner for Patents
P.O. Box 1450
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APPELLANTS' REPLY BRIEF

Sir:

I. INTRODUCTION

Appellants submit Appellants' Reply Brief in response to the Examiner's Answer dated August 23, 2007 pursuant to 37 C.F.R. § 41.41(a). Appellants respectfully submit the Examiner's Answer has failed to remedy the deficiencies with respect to the Final Office Action dated November 21, 2006 as noted in Appellants' Appeal Brief filed on March 21, 2007 for at least the reasons set forth below. Accordingly, Appellants respectfully request that the rejections of pending Claims 1-28 be reversed.

**II. A PRIMA FACIE CASE OF OBVIOUSNESS HAS NOT BEEN ESTABLISHED
WITH RESPECT TO THE COMBINATION OF ABENE, NADEAU AND JONES**

Appellants respectfully request that the Board reverse the rejections of Claims 1-7 and 11-28 under 35 U.S.C. §103(a) because the Examiner has still failed to provide sufficient evidence that each and every limitation of the present claims is contained in the cited references.

Independent Claims 1, 4, 11 and 13 recite, in part, the steps of obtaining a biological sample analysis from the pet after the pet has eaten a combination of the kibble and the additive and suggesting or preparing a second pre-manufactured kibble and a second pre-manufactured or pet food additive based on the biological sample analysis and the individual pet profile. The kibble and additive from which the biological sample analysis is obtained are derived from the processing the individual pet profile. Independent Claim 12 recites, in part, the steps of receiving an analysis from a biological sample of the pet after the pet has been eating a pet food manufactured according to the first pet food formula and creating or suggesting a pet food additive formula and a pre-manufactured kibble utilizing information obtained from the individual pet profile and biological sample analysis. Similarly, the first pet food formula is based on an individual pet profile.

An advantage of the present invention that is not disclosed or suggested by the cited references is that an analysis of the biological sample can be obtained after the pet has eaten, for a predetermined period of time, a combination of a customized pet food such as, for example, a first pre-manufactured kibble and the first custom additive produced based on individual pet profile information. The biological sample analysis can provide information that enhances or supplements the individual pet profile information and be used to further modify and refine the customized pet food product by suggesting a different pre-manufactured kibble, adding specific additive ingredients, removing specific additive ingredients, and/or changing the amount of any included additive ingredient from the pet product formulation to enable the new formulation to better meet the needs of the pet. See, specification, paragraph 16.

In contrast to the present claims, *Abene*, *Nadeau* and *Jones* all fail to disclose or suggest the step of obtaining a biological sample analysis from the pet after the pet has eaten a combination of a first kibble and additive that correlates with the processed pet profile as required, in part, by independent Claims 1, 4, 11 and 13. In fact, in the Examiner's Answer at

pages 8 and 11, the Examiner admits that *Abene* and *Jones* do not teach taking biological samples from a pet after eating a suggested pet food. However, the Examiner also states that “[t]his deficiency has been taught by *Nadeau* et al. wherein a series of dog food formulations are given to a dog, the dog eats the dog food [and] a biological sample specifically a stool sample is taken from the dog, after consumption of the food.” See, Examiner’s Answer, page 8, lines 15-20.

In contrast, Appellants respectfully submit that, although *Nadeau* is said to teach obtaining a biological sample analysis, the stool sample in *Nadeau* is taken after feeding a pet a general meat chunk-in-gravy pet food. See, *Nadeau*, column 4, lines 36-58. This meat chunk-in-gravy pet food is not based on any individual profile of the pet, as required in the present claims. Moreover, the method in *Nadeau* recites substantially increasing stool quality in a pet which has experienced unacceptable stool quality after ingesting primarily a meat chunk and gravy diet having unacceptable stool quality. See, *Nadeau*, column 1, lines 28-55 and Claim 1. Because *Nadeau* relates to pets already experiencing a stool problem stemming from a general pet food, any stool sample taken subsequently does not disclose or suggest a biological sample analysis taken after the pet has eaten a kibble, additive or pet food based on a pet profile.

Abene, *Nadeau* and *Jones* also fail to disclose or suggest the step of receiving an analysis from a biological sample of the pet after the pet has been eating a pet food manufactured according to the first pet food formula as required, in part, by independent Claim 12. As discussed above, the Examiner admits that that *Abene* and *Jones* do not teach taking biological samples from a pet after eating a suggested pet food such as, for example, the pet food manufactured according to the first pet food formula as required, in part, by independent Claim 12. See, Examiner’s Answer, pages 8 and 11. Moreover, Appellants have demonstrated above that the general pet food of *Nadeau* does not disclose or suggest a biological sample analysis taken after the pet has eaten a kibble, additive or pet food based on a pet profile.

Because *Abene*, *Nadeau* and *Jones* all fail to disclose certain elements of the present claims, Appellants respectfully disagree with the Examiner’s repeated assertions that Appellants have improperly argued each reference singularly. See, e.g., Examiner’s Answer, page 12, line 20. In contrast, Appellants respectfully submit that, to the extent that the references have been considered singularly, the references were considered in this manner solely for the purpose of

demonstrating the impropriety of the obviousness rejection because every element of the present claims is not present in the combination of the cited references.

**III. A PRIMA FACIE CASE OF OBVIOUSNESS HAS NOT BEEN ESTABLISHED
WITH RESPECT TO THE COMBINATION OF ABENE, NADEAU AND PRATT**

Appellants respectfully request that the Board reverse the rejections of Claims 8-10 under 35 U.S.C. §103(a) because the Examiner has still failed to provide sufficient evidence that each and every limitation of the present claims is contained in the cited references.

Independent Claim 8 recites, in part, an apparatus comprising a means for obtaining a biological sample analysis from the pet after the pet has eaten a combination of the kibble and the additive in accordance with a processed individual pet profile and a means for suggesting a second pre-manufactured kibble and a second pet food additive formula based on the biological sample analysis and the individual pet profile. In contrast, Appellants respectfully submit that, even if combinable, the cited references fail to disclose or suggest a number of elements of independent Claim 8.

For example, *Abene*, *Nadeau* and *Pratt* all fail to disclose or suggest a means for obtaining a biological sample analysis from the pet after the pet has eaten a combination of a first kibble and additive based on an individual pet profile as required, in part, by independent Claim 8. Moreover, *Abene*, *Nadeau* and *Pratt* all fail to disclose or suggest a means for suggesting a second pre-manufactured kibble and a second pet food additive formula based on the biological sample analysis and the individual pet profile.

Therefore, because each of the cited references fails to disclose or suggest at least one of the elements of the present claims, Appellants do not argue the references singularly to illustrate that each individual reference failed to disclose every element of the present claims. Rather, to the extent that the references have been argued in this manner, it was merely to demonstrate that the references fail to disclose each and every element of the claimed invention.

In sum, Appellants have discovered the novel way of making individual customized pet food products based on individual pet profiles and biological sample analyses. Nowhere do the cited references, alone or in combination, recognize or successfully employ every step of the claimed methods. For at least the reasons discussed above, Appellants respectfully submit that

independent Claims 1, 4 and 11-13 and Claims 2-3, 5-7 and 14-28 that depend from Claims 1, 4 and 11-13 are novel, nonobvious and distinguishable from the cited references and are in condition for allowance.

V. CONCLUSION

For the foregoing reasons, Appellants respectfully submit that the Examiner's Answer does not remedy the deficiencies noted in Appellants' Appeal Brief with respect to the Final Office Action. Therefore, Appellants respectfully request that the Board of Appeals reverse the obviousness rejections with respect to Claims 1-28.

No fee is due in connection with this Reply Brief. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 115808-459 on the account statement.

Respectfully submitted,

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